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PROGRAM INSTRUCTION

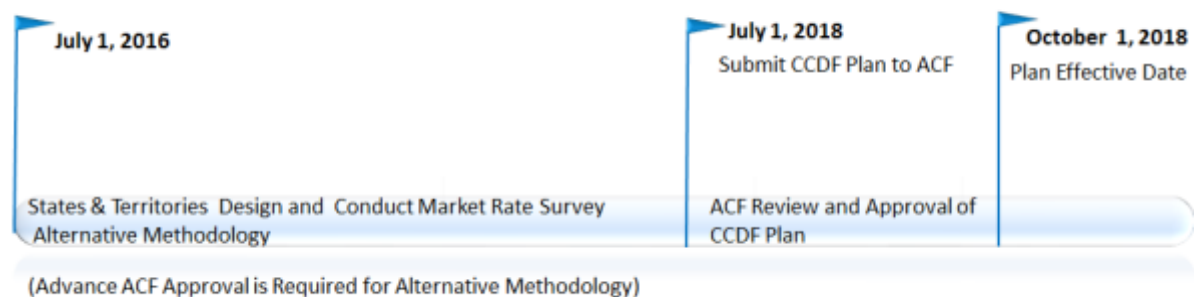
- To:** State and Territorial Lead Agencies administering child care programs under the Child Care and Development Block Grant (CCDBG) Act of 2014 and other interested parties.
- Subject:** Timeline and Requirements for Market Rate Survey and Alternative Methodology
- References:** The CCDBG Act, as amended (42 U.S.C. § 9857 *et seq.*); Section 418 of the Social Security Act (42 U.S.C. § 618); 45 CFR Parts 98 and 99.
- Purpose:** This Program Instruction clarifies timelines and requirements for State and Territorial Child Care and Development Fund (CCDF) Lead Agencies to develop and conduct market rate surveys or alternative methodologies for the purpose of setting provider payment rates pursuant to the requirements in the CCDBG Act and the CCDF final rule.
- Background:** The Child Care and Development Block Grant (CCDBG) Act of 2014 (P.L. 113-186) reauthorized the CCDF program, including the core tenet that families receiving CCDF-funded child care should have equal access to child care that is comparable to that of non-CCDF families. The Act requires Lead Agencies to set provider payment rates based on a valid market rate survey or alternative methodology. Insufficient subsidy rates violate the statutory requirement for equal access and undermine the purpose of the CCDF program. CCDF is serving a large number of vulnerable children who would benefit from access to high-quality care.
- Guidance:** Following Section 658E(c)(4)(B) of the CCDBG Act, 42 U.S.C. 9858c(c)(4)(B), the CCDF final rule at 45 CFR 98.45 requires states and territories to develop and conduct, not earlier than 2 years prior to submission of the CCDF Plan, either a market rate survey or alternative methodology to set provider payment rates. As discussed in the preamble to the final rule (81 FR 67454), the CCDBG Act requires the market rate survey or alternative methodology to be conducted every 3 years. The next CCDF Plan for FY 2019-2021 will be due July 1, 2018. Therefore, a state must develop and conduct its market rate survey or alternative

methodology for this upcoming CCDF Plan period no sooner than July 1, 2016. All states/territories must meet requirements of the CCDBG Act, as outlined in the attached table, to conduct and base provider payment rates on market rate survey or alternative methodology for the upcoming CCDF Plan period.

The final rule, published September 30, 2016, included some additional clarifications and details regarding the market rate survey or alternative methodology, also outlined in the attached table. These requirements in the final rule will apply to the market rate survey or alternative methodology used to set payment rates for the FY 2019-2021 CCDF Plan.

The Administration for Children and Families (ACF) recognizes that some states/territories may have already started developing or conducting their market rate survey or alternative methodology after July 1, 2016, but prior to publication of the final rule. Under these circumstances, if a state/territory is unable to meet all of the new regulatory provisions, it should contact the appropriate Office of Child Care (OCC) Regional Office as soon as possible. On a case-by-case basis, OCC will consider allowing such states/territories to proceed with the market rate survey or alternative methodology that they have already begun to develop or conduct in limited circumstances where it would impose a significant hardship to start over or make significant revisions. In these cases, the state/territory would need to: (1) demonstrate that it had already started conducting its market rate survey or alternative methodology prior to publication of the final rule; (2) identify the specific regulatory provisions that it is unable to meet; (3) describe why the market rate survey or alternative methodology cannot be revised to meet these requirements; and (4) describe alternative means for addressing all of the requirements to the extent possible (*e.g.*, if a consultation with child care worker groups did not occur prior to conducting the survey, perhaps the consultation can occur at another appropriate stage in the process).

Timeline for States/Territories: CCDF Plan FY 2019-2021



Alternative Methodology

The final rule requires advance ACF approval for any alternative methodology that will replace the market rate survey. Advance approval is not required if the Lead Agency plans to implement both a market rate survey and an alternative methodology. As noted in the preamble to the final rule (81 FR 67510), the Lead

Agency must still submit for advance ACF approval if they plan to conduct an alternative methodology in lieu of a market rate survey. If a state/territory has not yet initiated the process to develop or conduct its alternative methodology, it must submit a detailed written description of its approach prior to beginning this work, allowing adequate time (at least 60 days) for ACF review and approval.

Setting Payment Rates

The state/territory must base provider payment rates on the results of the most recent market rate survey or alternative methodology. Therefore, states and territories are expected to update rates based on their new market rate survey or alternative methodology. The state/territory must use its current market rate survey or alternative methodology (that was developed and conducted no earlier than July 1, 2016) to update its payment rates no later than the effective date of the FY 2019-2021 CCDF Plan (*i.e.*, by October 1, 2018). If the state/territory, at its option, updates rates prior to that date, it must file a Plan amendment to its FY 2016-2018 CCDF Plan.

As discussed in the preamble to the final rule (81 FR 67512), the 75th percentile payment rate is a benchmark for gauging equal access by Lead Agencies conducting a market rate survey. The 75th percentile payment rate was established as a benchmark for CCDF by the preamble to the 1998 Final Rule (63 FR 39959); therefore, states and territories are familiar with this rate as a proxy for equal access. Setting rates at the 75th percentile demonstrates that CCDF families have access to at least three-quarters of available child care based on the sample data used.

/s/

Rachel Schumacher
Director
Office of Child Care